

**H. B. 2428**

(By Delegates Fleischauer, Azinger, Brown,  
Hamilton, Sobonya and Hatfield)

[Introduced January 12, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §17C-5B-1 of the Code of West Virginia,  
1931, as amended, relating to requiring a preliminary breath  
analysis for the purpose of determining the blood alcohol  
content of a surviving driver.

*Be it enacted by the Legislature of West Virginia:*

That §17C-5B-1 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 5B. POSTMORTEM TESTS FOR ALCOHOL IN PERSONS KILLED IN  
MOTOR VEHICLE ACCIDENTS.**

**§17C-5B-1. Blood test for alcohol in drivers and adult  
pedestrians killed in motor vehicle accidents;  
time limit for conducting test; who may conduct  
test; express consent to withdraw blood from dead  
body granted; granting civil and criminal immunity  
to person conducting test; fee for test.**

(a) When any motor vehicle driver or adult pedestrian dies in

1 a motor vehicle accident in this state or dies within four hours  
2 after having been involved in a motor vehicle accident in this  
3 state, the physician in attendance, or law-enforcement officer  
4 having knowledge of such death, or the funeral director, or any  
5 other person present when such death occurred, shall immediately  
6 report such death to the medical examiner of the county in which  
7 such death occurred. Upon receipt of such notice, the medical  
8 examiner shall take charge of the dead body and shall conduct, or  
9 shall cause to be conducted, within twelve hours after receiving  
10 such notice and before the dead body is embalmed, a blood test to  
11 determine the presence and percentage concentration of alcohol in  
12 the blood of such dead body.

13       **(b)** The blood test conducted on a dead body as required under  
14 this section shall be conducted only by a person qualified to  
15 conduct an autopsy under article twelve, chapter sixty-one of this  
16 code or by a doctor of medicine, doctor of osteopathy, registered  
17 nurse, trained medical technician at the place of his or her  
18 employment or county coroner who is deemed qualified by the office  
19 of medical examinations to conduct such blood test.

20       **(c)** Any person who is to conduct a blood test under the  
21 provisions of this section is hereby expressly authorized to  
22 withdraw blood from the dead body in the quantity necessary to  
23 conduct such blood test. Any person withdrawing blood from the  
24 dead body and testing such blood and any hospital or clinic in

1 which such blood is withdrawn and tested under the provisions of  
2 this section shall be immune from all civil and criminal liability  
3 which might otherwise be imposed.

4       (d) Any person conducting a blood test under the provisions of  
5 this section shall receive a standardized fee in the amount  
6 determined by the office of medical examinations, which fee shall  
7 be paid from funds appropriated to the office of medical  
8 examinations.

9       (e) Nothing contained in this section shall be construed to  
10 preclude the taking of a blood test by any other person having the  
11 right to take any such test or cause such test to be taken while  
12 the medical examiner has charge of the body.

13       (f) In addition to the other provisions of this section, a  
14 law-enforcement officer investigating an automobile accident  
15 involving the death of any person shall immediately require any  
16 surviving driver to submit to a preliminary breath analysis for the  
17 purpose of determining such person's blood alcohol content. Such  
18 breath analysis must be administered as soon as possible after the  
19 law-enforcement officer has a reasonable belief that the person had  
20 been driving when his or her automobile was involved in an accident  
21 causing death.

NOTE: The purpose of this bill is to require a preliminary  
breath analysis for the purpose of determining the blood alcohol  
content of a surviving driver.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.